Numb 165.

THE Pennſylvania GAZETTE.

Containing the freſheſt Advices Foreign and Domeſtick.

From Tueſday, January 18. to Tueſday, January 25. 1731-2.

To the Query, propos'd to the Caſuiſt *in the laſt Gazette, I have received two Anſwers, from different Hands, each of which ſubſcribes himſelf* The Caſuiſt. *As their Opinions are different, 'twill perhaps be more ſatisfactory to the Queriſt if I inſert them both.*

To the Printer of the GAZETTE.

MY Opinion, which is deſired by *T. P.* on his Query in your laſt Week's Paper, I here ſend to you.

The Keeper, being accountable for the Value of the Horſe, at the end of Six Months, to his Owner, ſhould then ask him if he's willing to ſell the Horſe, and for what Price. The Owner ſetting a reaſonable Price, may thereout deduct his Charge for Keeping (according to Agreement) and pay the remaining Sum to the Owner in Money.

This I think will be juſt in ſo plain a Caſe. But as the Owner's Conſent to the Selling of his Horſe, is requiſite, and as it may happen he will refuſe, and the Caſe may be attended with other Circumſtances; to wit, in the Opinion of the Keeper the Owner ſets too great a Price, and will not, when he is told of the Misfortune of the Horſe's being ſtray'd or ſtolen away, make a moderate Abatement; Or, at firſt he anſwers he is not willing to part with his Horſe: And, in the Opinion of the Owner, the Keeper has not duly regarded the Performance of his Bargain, has careleſly ſuffered the Horſe to ſtray or be ſtolen, or does conceal him in order to purchaſe him at an under Rate. The Caſe being thus, I would adviſe the Parties to refer the Deciſion of it to two or more honeſt Men, indifferently choſen between them. *Yours*, The CASUIST.

To the Printer of the GAZETTE.

ACcording to the Requeſt of your Correſpondent, *T. P.* I ſend you my Thoughts on the following Caſe, by him propoſed, *viz.*

A Man bargained with another, for the Keeping of his Horſe ſix Months, while he made a Voyage to Barbadoes. *At his Return, he demands the Horſe. The Man who had him to keep, aſſures the Owner, that his Horſe ſtray'd away, or was ſtolen, within a few Days after he receiv'd him, and that he has not heard of him ſince. The Owner then demands the Value of his Horſe in Money.* Query, *Whether the Man who took the Horſe to keep, may not juſtly demand a Deduction of ſo much as the Keeping of the Horſe would have amounted to for ſix Months, according to the Agreement?*

It does not appear they had any Diſpute about the Value of the Horſe, whence we may conclude there was no room for ſuch Diſpute, it being well known how much he coſt, and that he could not honeſtly have been ſold again for more.

But the Value of the Horſe is not expreſs'd in the Caſe, nor the Sum agreed for keeping him ſix Months; wherefore in order to our more clear Apprehenſion of the Thing, let *Ten Pounds* repreſent the Horſe's Value, and *Three Pounds* the Sum agreed for his Keeping.

Now the ſole Foundation on which the Keeper can ground his Demand of a Deduction, for Keeping a Horſe he did not keep, is this; *Your Horſe*, he may ſay, *which I was to reſtore to you at the end of 6 Months, was worth* Ten Pounds; *If I now give you* Ten Pounds, *'tis an equivalent for your Horſe, and equal to returning the Horſe itſelf: Had I return'd your Horſe,* (value 10 *l.*) *you would have paid me* 3 *l. for his Keeping, and therefore would have rec iv'd in Fact but* 7 *l. clear; you then ſuffer no Injury if I now pay you* 7 *l.; and conſequently you ought in Reaſon to allow me the remaining* 3 *l. according to our Agreement.*

But the Owner of the Horſe may poſſibly inſiſt upon being paid the whole Sum of Ten Pounds, without allowing any Deduction for his Keeping after he was loſt; and that for theſe Reaſons.

1. Unleſs an expreſs Agreement be made to the contrary, 'tis always ſuppos'd when Horſes are put out to keep, that the Keeper runs the Riſque of them, (unavoidable Accidents only excepted, wherein no Care of the Keeper can be ſuppoſed ſufficient to preſerve them, ſuch as their being ſlain by Lightning, ſwept away by ſudden Floods, or the like) *This you yourſelf tacitly allow, when you offer to reſtore me the Value of my Horſe.* Were it otherwiſe, People having no Security againſt a Keeper's Neglect or Miſmanagement, would never put Horſes out to keep.

2. Keepers, conſidering the Riſque they run, always demand ſuch a Price for keeping Horſes, that if they were to follow that Buſineſs continually, they may have a living Profit, tho' they now and then pay for a Horſe they have loſt. And if they were to be at no Riſque, they could afford to keep Horſes for leſs than they uſually have: So that what a Man pays more for his Horſe's Keeping, than the Keeper could afford to take if he ran no Riſque, is in the Nature of a Præmium for the Inſurance of his Horſe. *If I then pay you for the few Days you kept my Horſe, you ought to reſtore me his full Value.*

3. *You acknowledge that my Horſe eat of your Hay and Oats but a few Days, 'tis unjuſt then to charge me for all the Hay and Oats that he* only might have eat if you had kept him, *in the Remainder of the 6 Months, and which you have now good in your Stable.* If, as the Proverb ſays, 'tis unreaſonable to expect a Horſe ſhould void Oats, who never eat any; 'tis certainly as unreaſonable to expect Payment for thoſe Oats.

4. If Men in ſuch Caſes as this, are to be paid for keeping Horſes when they were not kept; then they have a great Opportunity of wronging the Owners of Horſes: *For, by privately ſelling my Horſe for his Value* 10 *l. ſoon after you had him in Poſſeſſion, and returning me only* 7 *l. at the Expiration of the Time, demanding* 3 *l. as a Deduction agreed for his Keeping; you get that* 3 *l. clear into your Pocket; beſide the Uſe of my Money* 6 *Months for nothing.*

5. But, you ſay, *the Value of my Horſe being* 10 *l. if you deduct* 3 *l. for his Keeping, and return me* 7 *l. 'tis all I would in fact have receiv'd, had you return'd my Horſe; therefore, as I am no Loſer, I ought to be ſatisfied.* This Argument, were there any weight in it, might equally ſerve to juſtify a Man in ſelling, as aboveſaid, as many of the Horſes he takes to keep, as he conveniently can, putting clear into his own Purſe, all that Charge their Owners muſt have been at for their Keeping, and returning the reſt; for this being no Loſs to the Owners, he may ſay, *Where no Man is a Loſer,*

why

Why may not I be a Gainer? I need only anſwer to this, That I allow the Horſe coſt be but 10 *l.* nor could I have ſold him for more, had I been diſpos'd to part with him; but this can be no Reaſon why you ſhould buy him of me at that Price, whether I will ſell him or not. 'Tis plain I valued him at 13 *l.* otherwiſe I ſhould not have paid 10 *l.* for him, and agreed to give you 3 *l.* more for his Keeping till I had Occaſion to uſe him. Thus, tho' you pay me the whole 10 *l.* which he coſt me (deducting only for his Keeping thoſe few Days) I am ſtill a Loſer; I loſe the Charge of thoſe Days Keeping, I loſe the 3 *l.* at which I valued him above what he coſt me, and I loſe the Advantage I might have made of my Money in 6 Months, either by the Intereſt, or by joining it to my Stock in Trade in my Voyage to *Barbadoes*. And all this I loſe by your Negligence.

6. And laſtly, Whenever a Horſe is put to keep, the Agreement naturally runs thus: The Keeper ſays, *I will feed your Horſe 6 Months on good Hay and Oats, if at the End of that Time you will pay me* 3l. The Owner ſays, *If you will feed my Horſe 6 Months on good Hay and Oats, I will give you* 3 l. *at the End of that Time.* Now we may plainly ſee, the Keeper's Performance of his Part of the Agreement muſt be antecedent to that of the Owner; and the Agreement being wholly conditional, the Owner's Part is not in Force till the Keeper has performed his. *You then, not having fed my Horſe 6 Months, as you agreed to do, there lies no Obligation on me to pay you for 6 Months Feeding.*

Thus we have heard what can be ſaid on both ſides. Upon the whole, I am of Opinion, that no Deduction ſhould be allow'd for the Keeping of the Horſe after the Time of his ſtraying. *I am Yours*, &c.

The CASUIST.

Since the Above, I have alſo receiv'd the Following.

To the Printer of the Pennſylvania GAZETTE.

ALtho' I am not Mr. *Caſuiſt*, I have preſumed to ſend the following Anſwer to the Query in your laſt Week's Paper.

The Loſs of the Horſe, naturally implies a Neglect of the Keeper; and there is no Reaſon the Owner ſhould ſuffer by any Act of the Keeper, either in the Price of the Horſe, or Expence of ſeeking after him. And foraſmuch as the Keeper hath fallen ſhort in the Performance of his Contract, he not only doth not deſerve any Reward, but hath forfeited the Penalty of the Bargain, if there were any Penalty annexed to it. But it is quite otherwiſe with the Owner; for the Performance on his Part, is ſubſequent to that of the Keeper; nor can he be ſaid to fail till the other hath performed, which he hath put out of his Power ever to do. Therefore he ought to have Satisfaction for no more than the Time he had the Horſe in Keeping.

Yours, &c. N. B.

Boſton, Jan. 3. Laſt Saturday Night, The LYON, King of Beaſts, who had travelled all over North America by Sea and Land, died here in a Tan-yard. Like other Kings, his Death was often reported, long before it happened.

New-York, Jan. 18. There has been a Suſpicion of ſome counterfeit Dollars being made in this City; upon which, laſt Week, a ſpecial Warrant was iſſued; but one of the Perſons ſuſpected is abſconded, and no Proof appearing againſt the other, he is diſcharged; however, this may caution People to take Care what Dollars they receive.

By a Letter from Jamaica on Long-Iſland, dated the 9th Inſtant, we are informed, that in and about that Town, there have been inoculated with the Small-Pox, about One Hundred and Sixty Perſons; that none of them have died ſave one Foſter Waters, who had taken the Infection before, as appeared by his falling ſick the very next Day after he was inoculated. And on the other hand, above half of thoſe that took it in the natural way, are dead.

We are alſo informed that the Small Pox ſpreads very much in ſeveral Parts of this Province, and in New-Jerſey alſo. And that at Amboy, New Brunſwick, and the adjacent Places, many have been inoculated, and none have died, but have had, and at preſent have the Diſtemper very eaſy.

Cuſtom-Houſe, New-York, Jan. 18. *Inward Entries.* None. *Entred Outwards*, French for Leghorn, Young for Leward Iſlands. *Cleared*, None.

PHILADELPHIA, *Jan.* 25.

We hear that Capt. Bromage, bound from Briſtol to this City, is arrived at Lewes.

The Aſſembly of this Province adjourn'd laſt Week, to the laſt Day of July next.

The Act for encouraging the raiſing of Hemp, occaſioning too heavy an Expence to the Publick, is repealed.

Laſt Wedneſday in the Afternoon, Samuel Burroughs and a Lad his Son, who lived on the other ſide of Delaware, having been at Market in this City, as they were returning home broke through the Ice and were drowned, none being near enough (tho' there were abundance of People on the River) to lend them any Aſſiſtance. The Man was taken up the next day, near the ſame Place, but the Lad is not yet found.

Buried in the ſeveral Burying-Grounds of this City in a Week paſt

Church - - - - -	1.	Baptiſts - - - - - - - - -	0.
Quakers - - - -	2.	Strangers Whites - - -	0.
Presbyterians - -	1.	Strangers Blacks - - -	1.

Advertiſements.

RUN away *January* the 14th, from *Robert Shewell*, Cooper, at Judge *Langhorne's* Mill in *Middletown*, near *Briſtol* in *Bucks* County, an Apprentice Fellow named *Abraham Wells*, aged about 18, of middle ſtature, well ſet, full faced, with a fair complexion, freſh colour, and light brown hair. Had on a good homeſpun drugget coat, lined with thin ſtuff, braſs buttons a row of them down each ſleeve, and long pockets; a veſt of the ſame but not lined; ozenbrigs ſhirt, leather breeches, fine grey yarn ſtockins, good ſhoes, a red ſilk handkerchief, and a good felt Hat. He alſo took with him a pair of ſtriped drawers, two pair of men's ſhoes, new, one pair of womens ſhoes, a little gun, and a new ſheepskin apron of tann'd leather. Whoever ſecures the ſaid Apprentice, ſo that he may be had again, ſhall have *Forty Shillings* Reward and reaſonable charges paid by *Robert Shewell.*

TO be Sold, the Sloop HAPPY, with her Boat, Sails, Anchors, Cables, and all other Tackle belonging to her; burthen about 34 Tons, now lying at *Chicheſter*. Any Perſon enclining to buy either one half or all the ſaid Sloop, may enquire of *Prudence Moulder* or *Joſeph Wheldon* at *Chicheſter* aforeſaid, and know further.

RUN away on the 15th Inſtant, from *Daniel Bacon*, of the Townſhip of *Cheſterfield* in *Burlington* County, two Servant Men, the one named *William Willis*, about 24 Years of Age, of middle Stature, thick and well ſet, of a ſwarthy brown Complexion, black curled Hair; had on a new felt Hat, a dark browniſh Kerſey Waſtecoat, with the lightiſh Kerſey Waſtecoat under it, old Leather Breeches, grey Yarn Stockins, ſtrong leather-heel'd Shoes; he alſo hath along with him a lightiſh Kerſey Coat, and two ozenbrigs Veſts, and a pair of Ticken Drawers. The other is named *Samuel Freeman*, about 23 Years of Age, but ſmall and ſlim, of a pale Complexion, with his Hair off; had on a new felt Hat, a blueiſh Cap, grey Drugget Coat, a dark-colour'd Kerſey Waſtecoat, new Leather Breeches with Braſs Buttons, grey Yarn Stockins, and ſtrong leather-heel'd Shoes. Whoever takes up the ſaid Servants, and ſecures them ſo that their Maſter may have them again, ſhall have *Five Pounds* Reward, and reaſonable Charges paid, by me *Daniel Bacon.*

ALL Perſons that are indebted to the Eſtate of Dr. *Hugh Graham*, late of *Philadelphia*, deceaſed, on Account of Phyſick or Surgery, are deſired ſpeedily to pay the ſame to *Patrick Baird*, who is impowered, by the Executors of ſaid Dr. *Graham's* Will, to ſettle all ſuch Accompts, receive the Payments, and grant legal Diſcharges on their Behalf. Alſo all Perſons who are indebted to the ſaid Eſtate, by Bond, Bill, or other Specialty, are deſired to come and pay the ſame to the Executor, *George M'Call.*

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